

**IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION AT JACKSON**

CARLLEE ALLEN,	)	From the Shelby County Circuit Court
	)	at Memphis, Tennessee
Plaintiff/Appellee,)	
vs.	)	The Honorable Janice Holder, Judge
)	
MEMPHIS LIGHT, GAS & WATER DIVISION,	)	Shelby Circuit No. 44063-2 T.D.
	)	Appeal No. 02A01-9511-CV-00260
Defendant/Appellant.	)	AFFIRMED
)	
	)	Joseph G. Little
	)	Memphis, Tennessee
	)	Attorney for Defendant/Appellant
)	
	)	Marvin A. Bienvenu
	)	Gatti, Keltner, Bienvenu & Montesi
	)	Memphis, Tennessee
	)	Attorney for Plaintiff/Appellee

MEMORANDUM OPINION¹

HIGHERS, J.

FILED
December 31, 1996
Cecil Crowson, Jr. Appellate Court Clerk

_____ In this case, the Plaintiff, Carllee Allen, filed suit against the Defendant, Memphis Light, Gas & Water Division, for personal injuries and property damage resulting from a car accident. After a trial without a jury, the trial court awarded the Plaintiff \$130,000.00, the maximum statutory amount under the Tennessee Governmental Tort Liability Act . The Defendant has appealed the judgment of the trial court. For the reasons stated hereafter, we affirm the judgment of the trial court.

FACTS

On January 2, 1992, the Plaintiff was driving east on Summer Avenue. The Defendant's employee, Joan Kirk Holden ("Holden"), was driving west on Summer Avenue and was proceeding to turn left onto Graham Street from the left turn lane at the

¹Rule 10 (Court of Appeals). Memorandum Opinion. -- (b) The Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied upon for any reason in a subsequent unrelated case.

intersection of Summer Avenue and Graham Street. As the Plaintiff entered the intersection of Summer Avenue and Graham Street, the Plaintiff's traffic light turned yellow, and the Plaintiff attempted to travel through the intersection. As the Plaintiff's vehicle entered the intersection, Holden turned left in front of the Plaintiff. The Plaintiff's vehicle and Holden's vehicle collided at the intersection of Summer Avenue and Graham Street.

LAW

The issue before this Court is whether the trial court erred in finding that the proximate cause of the Plaintiff's injuries was one hundred percent the negligence of the Defendant's employee.

In cases tried without a jury, our standard of review is *de novo* upon the record of the trial court, accompanied by a presumption of correctness, unless the preponderance of the evidence is otherwise. T.R.A.P. 13(d). When the issues in a case turn upon the credibility of witnesses, the trial judge who has the opportunity to observe the witnesses' manner and demeanor while testifying is in a better position than this Court to decide those issues. Town of Alamo v. Forcum-James Co., 327 S.W.2d 47 (Tenn. 1959); Godwin Aircraft, Inc. V. Houston, 851 S.W.2d 816, 821 (Tenn. Ct. App. 1992).

The Defendant argues that there is insufficient evidence in the record which supports the trial court's finding that the proximate cause of the Plaintiff's injuries was one hundred percent the negligence of Holden. However, our review of the record indicates that there is substantial evidence which supports the trial court's finding. It is uncontroverted that Holden entered the intersection of Summer Avenue and Graham Street and attempted to make a left turn. Although Holden testified that she was turning left from Summer Avenue onto Graham Street on a green turn arrow, there was abundant testimony indicating that it was impossible for her to have been turning left onto Graham Street on a green turn arrow. Four witnesses testified that they were familiar with the intersection of Summer Avenue and Graham Street and that the green turn arrow for traffic

turning left from Summer Avenue onto Graham Street comes at the beginning of the light sequence and not at the end of the sequence. The testimony of Holden and the deposition testimony of Ennis McDaniel, a retired employee of the Defendant, conflicts with the testimony of the four other witnesses. Although Holden and McDaniel testified that Holden was turning left onto Graham Street on a green turn arrow, there is testimony from four other witnesses which reveals that Holden was not turning left onto Graham Street on a green left turn arrow but was rather turning left onto Graham Street in the absence of such an arrow. Because there is testimony in the record indicating that the Plaintiff was proceeding through the intersection at the instant that the traffic light turned yellow and that Holden turned left in front of the Plaintiff, we agree with the trial court's finding that the proximate cause of the Plaintiff's injuries was one hundred percent the negligence of Holden.

The Defendant argues that the trial judge erred in disregarding the deposition testimony of Ennis McDaniel. The record shows, however, that the trial court did consider the testimony, but did not find it credible. The Court noted that McDaniel "was a long-time employee of MLG&W...he is not necessarily an unbiased witness at this time." Further, the Defendant contends that the trial court erred in failing to make findings of fact. The court made oral findings which were transcribed and included in the record. The Defendant complains that these findings did not address every single fact which Defendant considered pertinent. It is not necessary, however, for the trial court to treat separately each fact or question at issue, so long as the trial court's findings as a whole cover all relevant facts necessary to a determination of the case. Hodge v. Provident Life and Acc. Ins. Co., 664 S.W.2d 297, 300 (Tenn. App. 1983). We find no error.

The judgment of the trial court is hereby affirmed. Costs on appeal are taxed to Appellant, for which execution may issue if necessary.

HIGHERS, J.

CONCUR:

FARMER, J.

LILLARD, J.